

Remarks

This Communication is in response to the Office Action dated November 3, 2009. The Office Action rejected claims 38, 42, 43, 45, 58-60, and 65 under 35 USC § 102(e) over Fischell (US 6,190,403); rejected claims 39 and 63 under 35 USC § 103(a) over Fischell in view of Kanesaka (US 5,810,872); rejected claim 46 under 35 USC § 103(a) over Fischell in view of Anderson (US 5,800,526); rejected claims 57, 61, 62, 64 and 66 under 35 USC § 103(a) over Fischell; and rejected claims 67-70 under 35 USC § 102(e) over Al-Saadon (US 5,755,776).

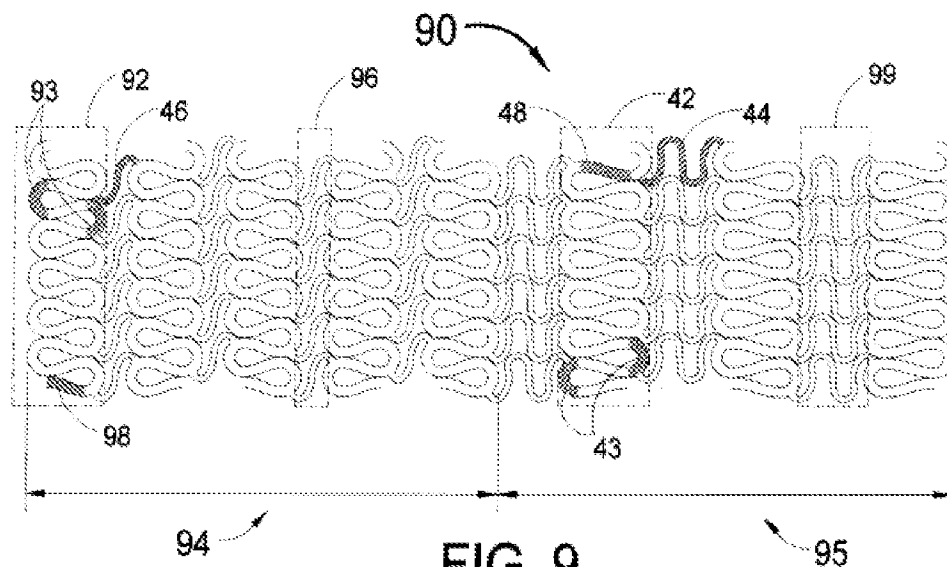
In light of the following comments Applicants request reconsideration.

Claim Rejections

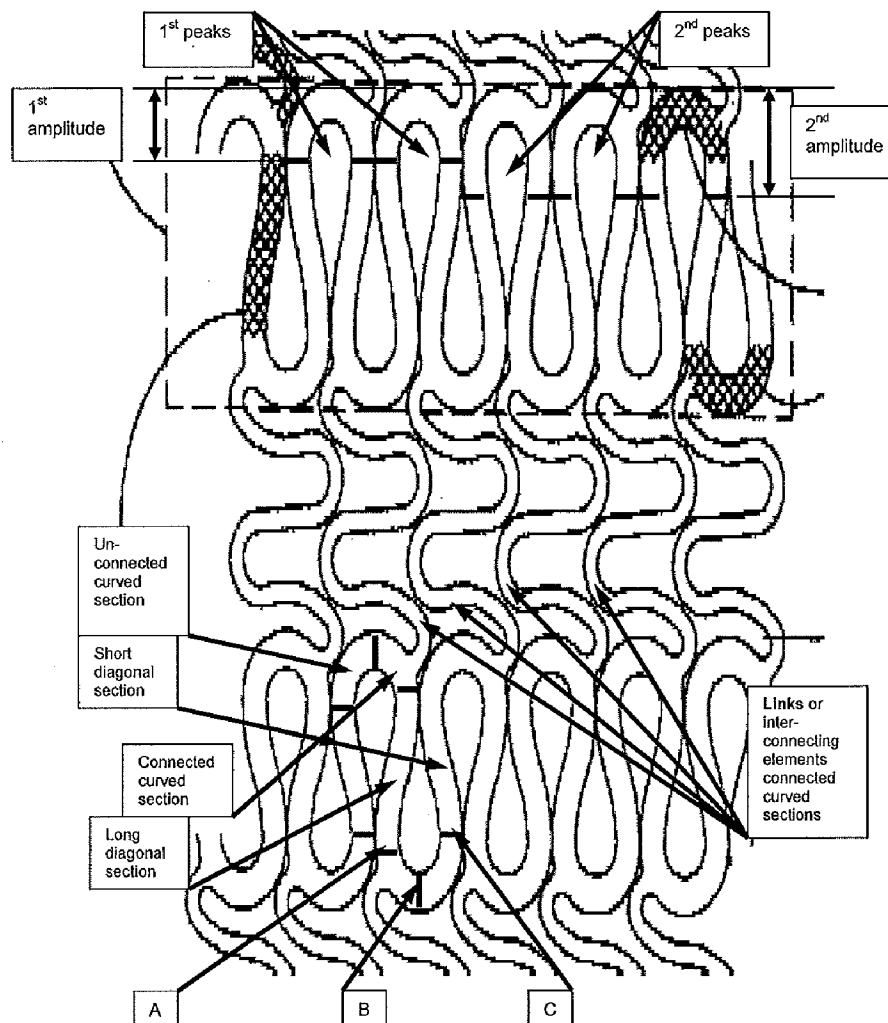
Claims 38, 42, 43, and 45 Under Section 102 Over Fischell

The rejection of claims 38, 42, 43, and 45 over Fischell is *traversed*. Independent claim 38 recites, in-part, “strut members also including at least one unconnected strut member consisting of a short diagonal section having a longitudinal length fixedly joined to an unconnected curved section.” Fischell does not disclose at least one unconnected strut member, as is claimed.

As shown below, for example in figure 9 of Fischell, Fischell discloses that “[e]very curved end strut 43 of a central set of strut members 42 is attached to either a connecting link which is an sine wave link 44 or a curved “J” link 46.” Column 7, lines 47-50 (emphasis added).



Moreover, the Office Action's annotated figure, below, shows the "curved end struts 43" and "curved diagonal struts 48" of Fischell parsed into seemingly arbitrary sections. The Office Action's interpretation, embodied in the annotated figure, does not comport with the ordinary and customary meaning of the claimed terms. *See* MPEP § 2111.01. For example, a person having ordinary skill in the art would not interpret the seemingly arbitrary portion of the "curved end strut 43" of Fischell as Applicants' claimed "unconnected curved section," especially in light of Applicants' preceding claim language reciting, "each interior circumferential set of strut members including a plurality of strut members connected by curved sections" In short, Fischell simply does not disclose unconnected curved sections.

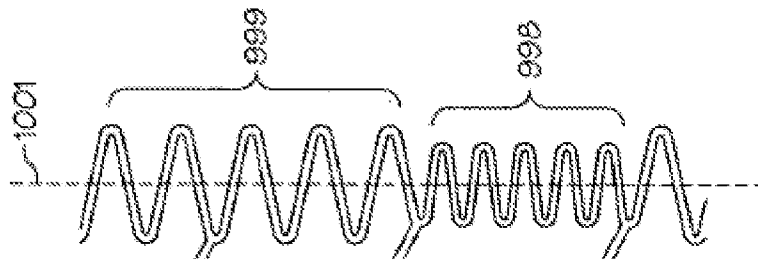


For at least the foregoing reasons Applicants request withdrawal of the rejection of claims 38, 42, 43, and 45.

Claims 58-60 and 65 Under Section 102 Over Fischell

The rejection of claims 58-60 and 65 over Fischell is *traversed*. Independent claim 58 recites, in-part, “the peaks of each band-like element comprising peaks of a first amplitude and peaks of a second amplitude, the first amplitude being less than the second amplitude” Fischell does not disclose peaks of a first amplitude and peaks of a second amplitude, the first amplitude being less than the second amplitude.

Moreover, the lines designating first peaks and second peaks in the Office Action’s annotated figure, *supra*, appear to be placed in an arbitrary fashion, without support from the Specification of Fischell. In contrast, Applicants’ Specification “provides, for example, that ‘peaks of the same amplitude are grouped together within a band-like element as are troughs of the same amplitude.’” The specification was clearly contemplating at least Fig. 11, which, as shown below, includes a grouping of larger amplitude peaks and another grouping of smaller amplitude peaks.” Quoting page 8, of Applicants’ previous Response dated April 30, 2009.



In their Response of April 30, 2009, Applicants further noted:

[u]sing the reasoning of the Office Action, the above segment could not be characterized as having peaks of the same amplitude grouped together since the band could be characterized as having an infinite number of peak amplitudes. This is a consequence of simultaneously (and inappropriately) applying multiple (inconsistent) definitions of the term.

Id. For at least the foregoing reasons, claim 58 and claims 59, 60, and 65 are patentable over Fischell, and Applicants request withdrawal of the rejection.

Claims 39 and 63 Under Section 103 Over Fischell and Kanesaka

Claim 39 depends from independent claim 38 and claim 63 depends from claim 58.

It is unclear how Kanesaka would cure the deficiencies of Fischell discussed above.

Consequently, it is unclear how the combination of Fischell and Kanesaka would teach or suggest what is claimed in independent claims 38 and 58, much less dependent claims 39 and 63. As such, Applicants request withdrawal of the rejection.

Claim 46 Under Section 103 Over Fischell and Anderson

Claim 46 depends from independent claim 38. It is unclear how Anderson would cure the deficiencies of Fischell, as discussed above with respect to independent claim 38.

Consequently, it is unclear how the combination of Fischell and Anderson would teach or suggest what is claimed in independent claim 38, much less dependent claims 46. As such, Applicants request withdrawal of the rejection.

Claims 57, 61, 62, 64, and 66 Under Section 103 Over Fischell

Claims 57, 61, 62, 64, and 66 depend either directly or indirectly from independent claims 38 and 58, respectively. As discussed above with respect to claims 38 and 58, Fischell does not disclose the subject matter of these claims. For at least the reasons discussed above, Fischell additionally does not teach or suggest what is claimed in dependent claims 57, 61, 62, 64, and 66. As such, Applicants request withdrawal of the rejection.

Claims 67-70 Under Section 102 Over Al-Saadon

The rejection of claims 67-70 over Al-Saadon is *traversed* for at least the following reasons. Independent claim 67 recites, in-part, “wherein some of the strut pairs including a longer strut member and a shorter strut member”

In rejecting this claim over Al-Saadon, the Office Action applied the following annotated figure (FIG. 7) from Al-Saadon.

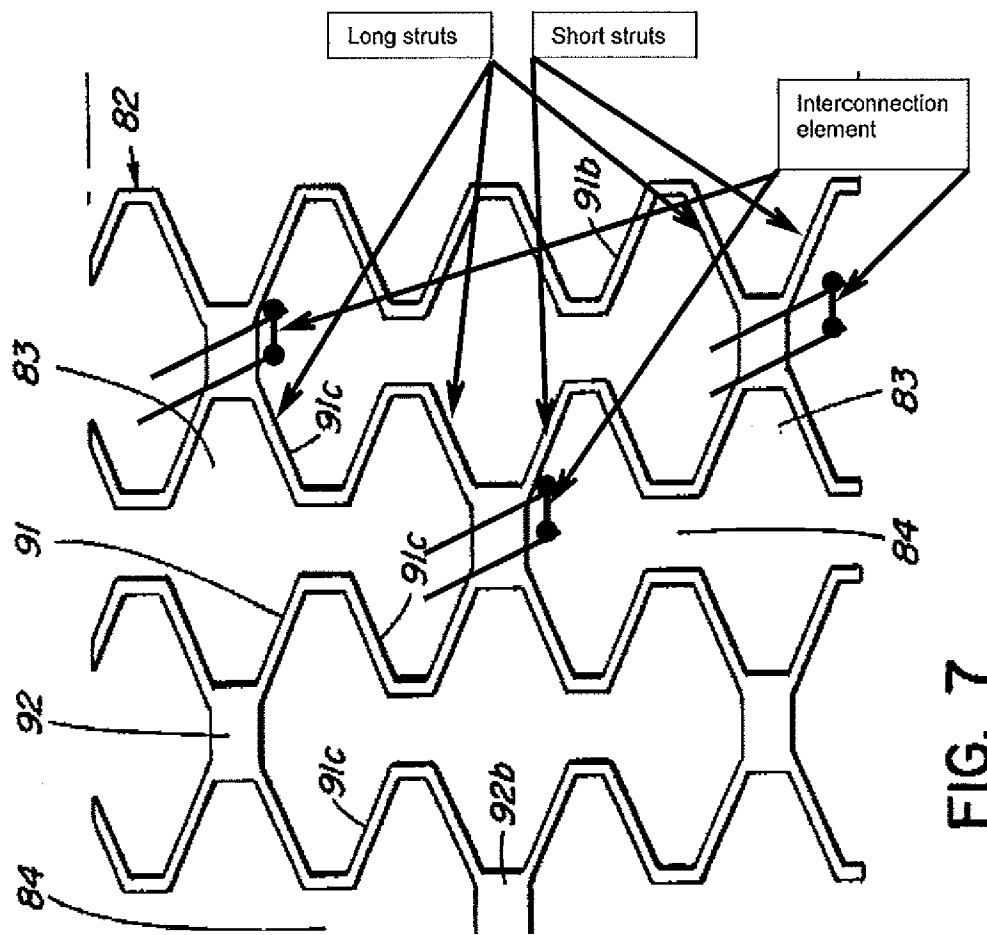


FIG. 7

Although Al-Saadon discloses that the “elongate members 91 of tubular stent 120 [of FIGS. 4 and 5] are more elongatable than those of tubular stent 80 of FIGS. 1 and 2,” column 3, lines 52-53, Applicants are unable to find anything in the disclosure of Al-Saadon that discloses “strut pairs including a longer strut member and a shorter strut member,” as is claimed. Moreover, as shown in FIG. 7, the elongate members 91 of Al-Saadon all appear to be the same length.

Furthermore, the Office Action’s characterization of Al-Saddon as allegedly having “short struts” and “long struts” appears to apply an arbitrary length to the elongate member(s) 91 by including a portion of the connecting member(s) 92. Such a characterization ascribes a meaning to the immediate claim language that is inconsistent with the plain meaning of the claim terms. By way of example, Al-Saddon recognizes a distinction between the “connecting member” and the “elongate member”; Al-Saddon identifies the “connecting member” by reference numeral

92 and the “elongate member” by reference numeral 91. Moreover, in light of figure 10 of the immediate Application, shown below, one of ordinary skill in the art would further recognize that the claimed shorter and longer strut members do not include portions of the interconnecting elements. Indeed, the claimed interconnecting elements are shown, for example, at reference numeral 844, connecting “peaks 836 and troughs 840 in adjacent band-like elements 820.” Paragraph [0067] of the Published Application.

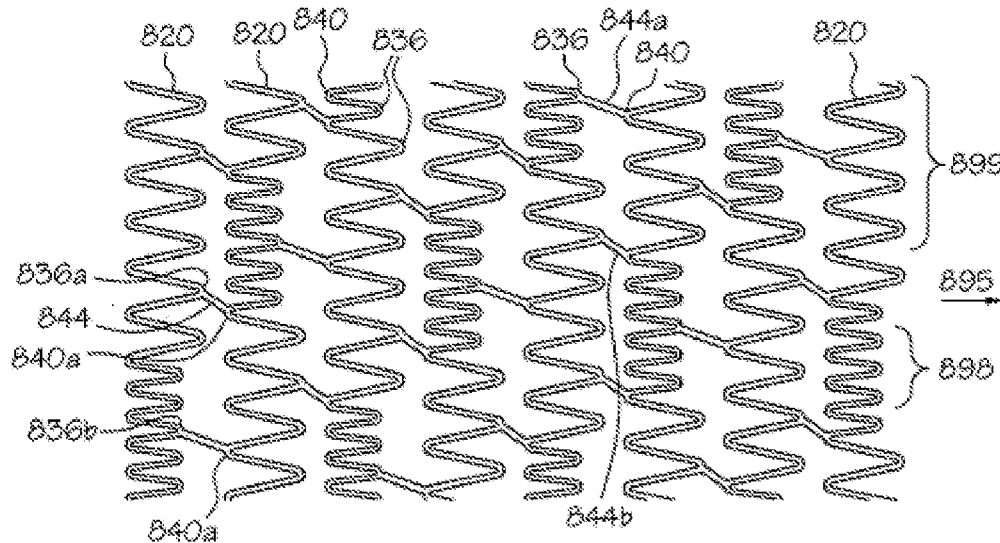


FIG. 10

In sum, Al-Saadon does not disclose “strut pairs including a longer strut member and a shorter strut member,” as is claimed. The Office Action’s characterization of Al-Saadon is inconsistent with the disclosure of Al-Saadon and the plain meaning of the claim terms.

In addition, in rejecting the immediate claims over Al-Saadon, the Office Action asserts, “[a]s to claims 67-70, Al-Saadon-‘776 (F7) discloses substantially all of the limitations of the claimed invention, such as long struts, short struts, interconnecting elements.” Without acquiescing to this assertion, it is further noted that a “claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

In light of the foregoing, Applicants request withdrawal of the rejection of claim 67 and claims 68-70 depending therefrom.

Conclusion

Based on at least the foregoing remarks, Applicants request withdrawal of the rejections and allowance of claims 38, 39, 42, 43, 45, 46, and 57-70. Favorable consideration and prompt allowance of these claims is earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

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